

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	
	)	
v.	)	DOCKET NO. 3:10-cr-00182-RJC
	)	
MICHAEL T. RAND	)	

**STIPULATION AND PROTECTIVE ORDER**

WHEREAS, Defendant Michael T. Rand (“Defendant”) has subpoenaed non-party Beazer Homes USA, Inc. (“Beazer”) in the above-captioned case to produce electronic data residing or recovered from a series of tapes that backed up certain of Beazer's servers during the period 2005 to 2007;

WHEREAS, Beazer is in possession of a large volume of electronic data, which may include both documents potentially responsive to the Defendant’s subpoena and documents over which Beazer may claim attorney-client privilege or work-product protection;

WHEREAS, the Defendant and Beazer are desirous of permitting discovery to proceed without delay and of avoiding possible disputes regarding the privileged or protected nature of such information;

WHEREAS, pursuant to a protective order, Beazer is willing to make available to Defendant's forensic expert the server backups from 2005 to 2007 that contained the Defendant's email data and to allow that expert to extract and use at trial only that information necessary to show the Defendant's patterns, if any, of deletions during that time period (i.e., information reflecting email metadata, such as date, time, sender, recipient, without the body of any particular email);

WHEREAS, Defendant's forensic expert will examine the information provided by Beazer without reading the content of the body of any particular email;

WHEREAS, Federal Rule of Evidence 502(d) provides that a federal court may order that the attorney-client privilege or work-product protection is not waived by disclosure connected with the litigation pending before the court; and

WHEREAS, "when a confidentiality order governing the consequences of disclosure . . . is entered in a federal proceeding, its terms are enforceable against non-parties in any federal or state proceeding. For example, the court order may provide for return of documents without waiver irrespective of the care taken by the disclosing party; the rule contemplates enforcement of "clawback" and "quick peek" arrangements as a way to avoid the excessive costs

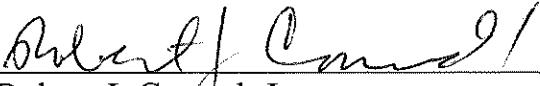
of pre-production review for privilege and work product.” *See* FED. R. EVID. 502, Advisory Committee Notes (2007);

NOW, THEREFORE, IT IS STIPULATED, AGREED AND ORDERED AS FOLLOWS:

1) Due to the large volume of electronic data in the possession, custody, or control of Beazer and the concerns regarding attorney-client privilege and work-product protection, the Court enters this Stipulation and Protective Order to expedite Beazer’s disclosure of electronic data and information, and to protect against disclosure of attorney-client privileged communications or work-product materials. Beazer’s disclosure or production of any information or document that is subject to an objection on the basis of attorney-client privilege or work-product protection, will not be deemed to waive Beazer’s claim to its privileged or protected nature or prevent Beazer from designating the information or document as attorney-client privileged or subject to the work-product doctrine at a later date.

2) This Stipulation and Protective Order shall be governed by Federal Rule of Evidence 502(d).

IT IS SO ORDERED this 14 day of October, 2011.

  
Robert J. Conrad, Jr.  
Chief United States District Judge

CONSENTED TO AND AGREED:

/s/ Kurt W. Meyers

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